

◆◆ Your quarterly guide to the key issues affecting Europe's online gambling sector

Online Gambling **Focus**

THIS ISSUE Online advertising and intellectual property rights



Introduction

Intellectual property (IP) rights and their relationship with online gambling is the topic for our first Online Gambling Focus of 2019.

With more advertising now taking place online, there

are risks that the placement of and revenue from advertising might be used to fund websites which breach IP rights. A common example of this is product advertising displayed on streaming websites that feature content which infringes IP rights.

The infringement of IP rights can be difficult to police in a borderless online environment and collaboration between stakeholders – including advertising regulators and companies who advertise online – is a necessary step to tackle the problem.

That is why EGBA is pleased to be contributing to the European Commission's [Memorandum of Understanding on advertising and intellectual property rights](#), which aims to curb the infringement of IP rights online by starving illegal websites of advertising revenue. The initiative formally began in 2018 and has already been signed by 27 companies and associations in the online advertising community.

We commit ourselves to sharing, encouraging and educating the online gambling sector on the principles of this memorandum and play our part in the wider EU efforts to crack down on online IP rights infringement.

In this edition we are pleased to have contributions from both the EU and the advertising sector. **Harrie Temmink**, from the European Commission, elaborates on the EU-led initiatives to safeguard IP rights online and **Stevan Randjelovic**, from GroupM, gives his perspective on the role of advertisers in keeping advertising compliant with IP rights.

Maarten Haijer,
Secretary General, EGBA



The EU Memorandum of Understanding on Online Advertising and Intellectual Property Rights and the online gambling sector

By **Harrie Temmink**, Deputy Head of Unit, Industrial Property and Fight against Counterfeiting, DG Internal Market, Industry, Entrepreneurship and SMEs (GROWTH), European Commission.

In 2014, the European Commission introduced the so-called 'follow the money' approach to the enforcement of intellectual property rights. Rather than penalizing the citizen for infringing copyright, trademarks etc, this approach consists of designing policy measures that identify and disrupt the money trail for commercial scale Intellectual Property (IP) Rights-infringing activities. It therefore aims to curtail the profit-making potential of IP rights-infringing activities, including in the online world.



➤➤ The 'follow the money' approach complements the legislative framework within the EU, in particular the 2004 Directive on the Enforcement of Intellectual Property Rights (IPRED).¹

In practice, the 'follow the money' approach translates into voluntary, non-binding agreements or memoranda of understanding (MoUs) between industry players. The European Commission acts as a facilitator of those agreements and as an 'honest broker', but it is not a signatory.

The 'follow the money' approach not only strengthens the cooperation between the industry representatives through the establishment of a sectorial code of conduct, it also helps identify best practices and disseminate them across the market, to the benefit of a wider range of actors.

■ ■ The success of MoUs very much depends on the participation of key operators; the good faith of the partners to genuinely engage in an effective cooperation and the ability to objectively measure the compliance with the commitments made.



Harrie Temmink,
Deputy Head of Unit,
Industrial Property
and Fight against
Counterfeiting, DG
Internal Market, Industry,
Entrepreneurship
and SMEs (GROWTH),
European Commission

In November 2017, the European Commission presented a comprehensive package of measures to reduce counterfeiting and piracy (IP Package)² and confirmed its 'follow the money' approach to IP rights enforcement. One of the industry-driven initiatives concerns online advertising on websites infringing IP rights.

The world of online advertising is a hugely complex one: governed by algorithms, real-time bidding, ad impressions, performance display ad allocation and an array of other perplexing factors. In this complex environment, the misplacement of advertisement on risky or IP rights-infringing websites and mobile applications is an issue,

with brands themselves often (but not always) being unaware of where their ads end up.³

This is an important problem since the websites and mobile applications that provide access to IP-infringing content, goods or services use the sale of advertising space as one of their revenue sources.

On June 25, 2018,⁴ under the auspices of the European Commission, representatives of the advertising industry, right holders and advertisers, as well as intermediaries and technology providers, signed an MoU with a set of commitments that should allow minimizing the placement of advertising on websites and mobile applications that infringe IP rights. The signatories include two associations with interest in the online gambling sector: the European Gambling and Betting Association (EGBA) and Sport Right Owners Coalition (SROC).

Indeed, research shows that within the EU the gambling-betting sector ranks first when it comes to the presence of brands on infringing websites (including illegal streaming websites). According to figures from the last quarter of 2018, 40% of all ads on such websites are from brands. Of these brands, 62% are companies active in the gambling sector.⁵ It is therefore fair to say that part of the online gambling industry finances pirated websites.

The MoU contains individual commitments for advertisers, advertising intermediaries and associations. Associations have committed themselves to use their best efforts to encourage their members not to offer for sale, recommend, re appropriate, to sign the MoU individually.

The agreement has an assessment period of 12 months during which the signatories meet quarterly. Three meetings have already taken place and the final one is scheduled for 24 June 2019. During that meeting, the signatories will discuss the effectiveness of the MoU. They will have to report on the concrete means they have in place and they will discuss the results of a study monitoring the impact of the MoU on the online advertising market. This evidence will feed an evaluation report to be drafted by the European Commission. In a subsequent meeting in September the decision should be made whether to continue the MoU or not.

The success of MoUs very much depends on the participation of key operators; the good faith of the partners to genuinely engage in an effective cooperation and the ability to objectively measure the compliance with the commitments made. The first eight months of experience with the MoU on Online Advertising and IP rights show that certain progress has been made. The Commission therefore hopes that the signatories will take a positive decision on continuation of the MoU in September. That will also be the moment for new parties to sign up.

¹ Further information: https://ec.europa.eu/growth/industry/intellectual-property/enforcement_en ² Further information: https://ec.europa.eu/growth/industry/intellectual-property_en#enforcement_package ³ 'Digital Advertising on Suspected Infringing Websites', EUIPO Observatory (2018): https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/publications/Digital+Advertising+on+Suspected+Infringing+Websites.pdf ⁴ The MoU and the names of the signatories is available at: <https://ec.europa.eu/docsroom/documents/30226> ⁵ See <https://www.white-bullet.com/q4-2018-report-10-of-all-ads-on-popular-ip-infringing-websites-in-europe-are-from-major-brands>

Fighting ad misplacement and ensuring media quality – an agency perspective

By **Stevan Randjelovic**, Brand Safety Manager, GroupM EMEA

Since the very beginning of the process, in 2016, GroupM has been working with the European Commission and other stakeholders on a Memorandum of Understanding (MoU) on Advertising and Intellectual Property Rights. And I would like to use this opportunity and explain why this issue is important for agencies and advertisers, what we are doing about it, and why the MoU is an important vehicle to reduce intellectual property (IP) infringement.



Brand safety broadly defines duty to protect brand reputation by ensuring advertising placement next to appropriate editorial content, in a viewable and fraud-free environment, and by being mindful of user-experience and privacy.

Stevan Randjelovic, Brand Safety Manager, GroupM EMEA

GroupM is the world's leading media investment company responsible for more than \$45B in annual media investment. We advise our clients and strategise with them how best to invest their ad money in order to reach their target audiences and drive business results. As a guardian of our clients' budgets, it is our duty to ensure they are aware of existing risks on different media and potential mitigation tactics.

We use the term 'brand safety' to define all areas of risk in the digital inventory supply chain, including IP infringement. Brand safety broadly defines duty to protect brand reputation by ensuring advertising placement next to appropriate editorial content, in a viewable and fraud-free environment, and by being mindful of user-experience and privacy.

Ensuring advertising placement next to appropriate editorial content falls under 'contextual brand safety.' Appropriate placement is achieved by avoiding the placement of ads next to unlawful content (*including IP infringing sites and apps*), illicit content (e.g. nudity, pornographic content etc.) and unsuitable content (misaligned with the brand values). IP infringement is part of wider adjacency management.

We manage contextual brand safety through a combination of the following six practices.

When **trading** media, we prefer to buy media directly from high quality and trusted media owners, and to avoid non-transparent ad networks or ad exchanges. If it is impossible to buy media directly, we require the use of white lists, blacklists and independent technology verifying whether the content of pages and apps is safe.

We also aim to agree on **contractual brand safety terms** which protect the interests of our clients. These terms may stipulate take-down procedures and what kind of content is appropriate for brands' adjacency.

Technology is another important element of the adjacency management. At GroupM we use technology in two ways: to inform our Global Blacklist (over 300,000 of apps and websites) and client bespoke white or blacklists, and to limit or block where ads appear at the point of the delivery. It is worth mentioning that GroupM works with our IP holding clients and legal enforcers (London City Police) to help us populate our Global Blacklist.





the MoU is an EU-wide initiative which allows advertisers, agencies, technology providers and others to showcase their commitment to solve the issue of inadvertently funding IP infringing websites and apps. It is a great forum to exchange best practice about tools and processes used to mitigate ad misplacement.

Stevan Randjelovic, Brand Safety Manager, GroupM EMEA

GroupM also has defined **operational processes** to monitor or vet media owner inventory to ensure it meets our own or client brand safety standards.

Industry cooperation is also of incredible importance. And make no mistake, we do not only talk the talk, but we also try to walk the talk. Industry bodies across the world are establishing programmes and often accrediting (following an independent audit) companies for their compliance with industry-established best practice guidelines. Two such frameworks immediately spring into mind: The Joint Industry Committee of for Web Standards in the UK and Ireland (JICWEBS) and the Trustworthy Accountability Group (TAG).

JICWEBS' Digital Trading Standards Group (DTSG) provides certification to companies in the UK for their adherence to the industry best practice. TAG does a similar job but at the global level. GroupM not only supports these two bodies but is certified by both.

Education inside and out is also of paramount importance to raise awareness of these issues.

Finally, the MoU is an EU-wide initiative which allows advertisers, agencies, technology providers and others to showcase their commitment to solve the issue of inadvertently funding IP infringing websites and apps. It is a great forum to exchange best practice about tools and processes used to mitigate ad misplacement.

Working with the European Commission on awareness raising means that we have a real shot at bringing more companies on board and reducing ad misplacement to more satisfying levels. However, this cannot happen if major players are missing the conversation. The problem will be one step closer to a solution with every company joining the effort. The opportunity is open for everybody.

EGBA | European Gaming & Betting Association

The European Gaming and Betting Association (EGBA) is the Brussels-based trade association representing the leading online gaming and betting operators established, licensed and regulated within the EU. EGBA works together with national and EU authorities and other stakeholders towards a well-regulated market that provides a high level of consumer protection and takes into account the reality of the digital economy and consumer demand.

European Gaming and Betting Association
50 rue Gray
1040 Brussels
Belgium

T: +32 2 554 0890

E: egba@egba.eu

egba.eu